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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

John F. Blake
DDA

EXTENSION

NO.

DATE

5 February 1976

25X1A

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. George Gary
OLC

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The latest version of our comments relating to the Executive Order for discussion at this morning's meeting.

MEMORANDUM FOR: Honorable John O. Marsh, Jr.
Counsellor to the President

SUBJECT: Comments on the DOD/DOJ Draft Restrictions
Executive Order

The following comments relate to the 4 February 1976 version of the Department of Defense and Department of Justice draft Restrictions Executive Order, with the comments grouped as applicable to, first, matters of substance or policy and, second, matters of language or style. The reasons for suggested changes are noted:

Substance or Policy

Page 1, Preamble

Change the last sentence of the first paragraph to read ". . . in a manner that preserves and respects our Constitutional concepts of privacy and civil liberties."

° This change in wording focuses on the domestic concern that foreign intelligence agencies not infringe upon Constitutional rights of United States persons rather than reflecting a more general concern for "established concepts."

Page 3, Section I: Definitions

(h) Add the underlined words to the definition of "United States persons" ". . . or other organizations incorporated or organized in the United States except those controlled by foreign powers."

° The qualifying phrase precludes a foreign power from cloaking its activities in the United

States and abroad with immunity simply by creating United States corporations as cover for the conduct of such activities.

Page 3, Section III: Restrictions on Collection

(a) Change the phrase ". . . such surveillance is in accordance with law . . ." to ". . . such surveillance is not inconsistent with United States law . . ."

° "In accordance with law" erroneously connotes that laws exist permitting and governing surveillance activities. In addition, United States law is specified in the changed wording since the intent is not to violate United States law--as distinguished from a foreign country's law that may necessarily be violated to accomplish a mission. (This change to specify United States law is suggested in several following paragraphs for similar reasons.)

Page 4, Section III (a)

(3) Add the underlined phrase: ". . . who is reasonably believed to be acting on behalf of a foreign power, or who is reasonably believed to be involved in international terrorist or narcotics activities, or who is reasonably suspected of engaging in activities threatening the national security.

° Since persons involved in terrorism and narcotics are not necessarily acting on behalf of a foreign power or threatening the national security, surveillance of them outside the United States would be precluded without the underlined phrase.

Page 4, Section III(b)

Change the wording of this paragraph to read (new phraseology is underlined):

(b) Electronic surveillance involving a communication which is made by a United States person or which is known to be intended for reception by a United States person, or directed against United States persons abroad except if such surveillance

is not in violation of United States law and is under procedures approved by the Attorney General; provided that under no circumstances shall the Central Intelligence Agency engage in electronic surveillance within the United States;"

° The current wording ". . . involving a communication which is made from or is intended by the sender to be received in the United States . . ." would deny to the United States Government the intercept of foreign government communications to or from the United States. In addition, the term "in accordance with law" was revised to "not in violation of United States law" for reasons noted under Section III(a) above.

Page 4, Section III

(c) Add the underlined words ". . . except in accordance with United States law and . . ."

° Since the paragraph is applicable to United States persons abroad, it should be clear that the reference is to United States and not foreign law.

Page 6, Section III(h)

Add the underlined category of persons to those United States persons on whom information may be collected:

"(2) Information concerning potential employees or persons who are . . ."

° This addition will permit security investigations on applicants for employment.

Page 6, (i)

(The additional restriction recommended for inclusion by Mike Duval's memorandum of 4 February 1976)
Change the first sentence to add the underlined words and delete the cross hatched words:

"(i) Solicitation within the United States from United States persons of non-publicly available information concerning the capabilities, intentions

or activities of ~~any~~ foreign powers, ~~of/of/any/ngh/~~
~~United/States/person~~ organizations or their agents,
whether within or outside the United States, or
concerning areas outside the United States, without
disclosing to such United States person . . ."

° The above changes to this paragraph are necessary to permit continued acquisition of publicly available information and to protect the intelligence nature of certain security investigations.

Page 8, Section VII, Assignment of Personnel

Change the first sentence to read (new wording underlined): "foreign intelligence agency personnel may not be detailed elsewhere within the federal government except as ~~with/for/for/by/law~~ consistent with United States law."

° Since there is no general statute authorizing details among government agencies (even though such details are considered lawful), this Executive Order should not appear to require statutory authority. Detail of personnel by and to intelligence agencies is considered essential.

Language or Style

Page 6, Section III(h)

(3) Change to the underlined word as indicated: ". . . or from ~~voluntary~~ cooperating foreign sources . . ."

° Change suggested since in the strict sense voluntary connotes "unpaid."

Page 6, Section III(h)

(4) Change to the underlined word: ". . . information incidentally gathered ~~showing~~ indicating involvement in activities . . ."

° The word "indicating" in this context appears more precise.

Page 6, Section III(h)

(5) Add the underlined word ". . . required by United States law . . ."

° Although "United States" is understood, the addition is suggested for consistency.

Section IV, Restrictions on Dissemination

(a) Change to the underlined words ". . . gathered by the disseminating agency in ~~the furtherance of~~ the course of carrying out its authorized mission."

° This change is to make clear that incidentally acquired information may be disseminated.

Page 7, Section V, Restrictions on Testing and Experimentation

(a) Change to the underlined words ". . . for intelligence purposes, ~~except in accordance with law~~ not inconsistent with United States law and under procedures . . ."

° This change is to avoid the connotation that a specific law is required for testing purposes.

I shall continue to be available to consult further on this draft Order at your convenience.

George Bush
Director